WORLD'S NEWS CONDENSED FROM THE COAST FILES

JUDGE GEAR CHALLENGES WHOLE SUPREME BENCH

(From Saturday's Advertiser)

New and strange developments arose in the Higashi habeas corpus case before the Supreme Court yesterday. They are such as to sidetrack, for a time, the "infamous punishment" issue on which that case turns.

Former Judge George D. Gear challenged the jurisdiction of the entire bench of three justices to hear the case, because, according to the Journal of the House of Representatives, they had "carefully considered and approved" a bill that was passed later and, as an Act of the Legislature of 1905, now came before that court to be construed.

It turned out, in the discussion that followed, that only the Chief Justice was consulted about the bill prior to its passage—and he not to the extent set out in Higashi's affidavit presented by Judge Gear. Yet the court appointed a hearing on the question of the disqualification of Chief Justice Frear. This, it is expected, will elicit a decision upon the general issue of whether a judge who has given advice upon pending legislation is disqualified to construe a law resulting from such legislation.

A more remarkable development of the Higashi case on this occasion was the arriving at common consent to reopen the disqualification question as decided in the Notley will case. It was there held that "a Justice of the Supreme Court is not, in the absence of statute, disqualified to sit in a case by reason of having been before his appointment to the bench counsel for one of the parties in the case, even where he has taken an active part in the case and advised upon the questions in issue."

Justice Hartwell made the interesting statement yesterday that he was "within an ace of resigning" in connection with that case. It was his disqualification that was in question there, and his concurrence with Justice Wilder it was which made the foregoing deliverance law.

Still another curious phase of the hearing yesterday was the voluntary testimony, relative to their alleged disqualification, which all three members of the court formally tendered. They had already made informal statements of the circumstances in question, but to place the issue correctly on the record they called in the court stenographer and dictated their evidence.

THE PROCEEDINGS.

Deputy Attorney General Prosser appeared for the Territory on its appeal from Judge De Bolt's decision releasing Higashi from imprisonment in Honolulu jail under a writ of habeas corpus, on the ground that he was unlawfully sentenced thereto. The ground of the decision was that Act 59 of the laws of 1905, "relating to prisoners other than felons," did not authorize imprisonment without hard labor as punishment for a violation of the gambling law, because the offense was a misdemeanor and the law provided the penalty of a fine of not more than one thousand dollars or imprisonment at hard labor not exceeding one year for misdemeanor. Act 59 is as follows:

"Section 1. No person committed or held for trial or to secure his attendance as a witness or upon civil process or for contempt or upon conviction of a misdemeanor or otherwise by authority of law, except upon conviction of a felony, shall be imprisoned in Oahu Prison or subjected to any infamous punishment.

"Section 2. This Act shall take effect upon its approval."

Judge Gear, when the Higashi case was reached, stated he had an affidavit of Higashi to present to show that the full bench was disqualified for hearing the appeal. He objected to the jurisdiction of the present members of the court.

"Upon what grounds?" Chief Justice Frear inquired.

Judge Gear replied by stating the grounds on which the writ of habeas corpus was granted, adding that while the statute in question (Act 59) was going through the Legislature, and on the second reading, the members of the court "carefully considered the statute and approved the same." In proof of this statement he read from the Journal of the House a report of the Judiciary Committee signed by Messrs. Andrade, Haia and Mahelona. Mr. Andrade, he further stated, when asked which members of the Supreme Court had considered and approved the bill, answered, "All of them."

"Approved of what?" the Chief Justice asked. "The policy, the validity or the effect of the Act?"

Justice Wilder interjected: "It was never submitted to me and even if it was I don't see anything in that affidavit that would disqualify me."

Judge Gear said that, from the statement of the Judiciary Committee, he deemed it his solemn duty to raise the question. If the statement were true that Justices of that court considered and approved that statute before its passage, it would be the right of the petitioner to object to the sitting of the same Justices in his case involving, as it did, the construction of that statute.

The Chief Justice said he was trying to refresh his memory, but could not recollect in what form the matter was submitted to him. He had forgotten the circumstances of the interview, but he did approve of something like that Act. Yet he did not think it disqualified him. Judge Gear having argued further, the Chief Justice asked how about the court's construction and approval of an act after it was passed.

"Then the court would be laying down the law," Judge Gear responded, "when the parties would have had an opportunity to be heard."

"Would the holding of an opinion disqualify?" Justice Wilder asked.

Justice Hartwell said he had been giving opinions on laws for the past thirty-eight years, "to the benefit of legislatures under all the various forms of government."

Judge Gear said it was different when he was not a member of the court. If, however, a bill was brought to Justice Hartwell and he gave an opinion on it, he would hesitate before sitting in a case where that law was in question.

Chief Justice Frear said legislatures in this country and in many states had been in the practice of asking supreme courts for opinions on legislation.

"That system provides a mode of procedure," Judge Gear replied.

"It is an ex parte proceeding," the Chief Justice observed.

Judge Gear said the United States Supreme Court would not consider such questions, and it ought to be a good example. He claimed the right of the petitioner to have his case tried by Justices who had not previously rendered a construction of the very law in question.

Justice Wilder wanted to know what was the definite objection—opinion, bias, prejudice, or whatever it was.

Judge Gear answered that he considered the report of the House Judiciary Committee would be reason enough on which to base a request for a decision.

THE NOTLEY DECISION.

Justice Wilder said the decision in the Notley case decided that a Justice had no right to withdraw unless it were shown that he was disqualified.

Judge Gear promptly responded that he thought the Notley decision was wrong and that, if an opportunity arose, the court might reverse itself. He would like to have the point argued in this case. To him that decision was repellant.

"The idea was so repellant to me," Justice Hartwell said with much earnestness, "that I was within an ace of resigning from the bench. It was only my firm conviction that the law compelled me to sit in the case which decided me."

Judge Gear remarked that he knew that the members of the bar generally would like to have that question reargued. He once tried a case for two weeks before finding that he was on the record as counsel—when he discovered his firm name of Davis & Gear in the pleadings—and all of the attorneys in the case agreed that he should not sit further.

"You did not give them a chance to say anything," Justice Wilder laughingly corrected. "You just stepped out."

In further conversation Judge Gear admitted that it did not appear from their statements that Justices Hartwell and Wilder were disqualified, and in answer to questions he stated the general merits of the habeas corpus case. As to the penalty question he cited the Savidge case decision, where that court held that a statutory penalty could not be split up at the discretion of a Judge.

Justice Hartwell said he had no such feeling of anxious pride about having his opinion justified which Judge Gear mentioned as a reason why no judge should give advice on pending legislation.

"That is because of your long legal training," Judge Gear responded. He went on to contend that a bad precedent should not be established. It was immaterial just what was done by any Justice of the Supreme Court when the question was submitted to him. The admission of the Chief Justice was some ground on which to test the question.

"Even if everything Judge Gear has said were true," Mr. Prosser remarked, "I do not think it amounts to disqualification." The Deputy Attorney General, having inquired if he was expected to make an argument, was told by the Chief Justice that the court would be glad to hear him.

Judge Gear, in reply to the court, said he had closed.

Justice Wilder suggested that perhaps he would like to present a more formal argument.

"I would be glad to discuss the question in the Notley case," Judge Gear answered, "if the court's mind is not irrevocably made up."

Justice Wilder said he would be glad to hear the question argued again.

Monday morning at 10 o'clock was set for a further hearing on Higashi's affidavit.

Mr. Prosser then wanted to know just what Judge Gear's grounds were, and Judge Gear read the affidavit. He also admitted that the question was narrowed down to the position of the Chief Justice. Mr. Prosser put the case thus:

"Whether an informal opinion of a Justice of the Supreme Court upon an Act of the Legislature before its passage disqualifies him from afterward sitting to construe such Act?"

"That's about it" the Chief Justice assented.

To get the basis of objection on the record the court stenographer was called in, when the members of the court dictated voluntary statements as follows (from the Advertiser reporter's own notes):

COURT'S TESTIMONY.

Chief Justice Frear—"According to my recollection I approved Act 59 of the Laws of 1905 before its enactment. To what extent I approved it, or to whom, or when, I do not recollect. I do not remember having given it careful consideration, except that I was familiar at that time with the difficulties which this Act, together with other acts, was intended to obviate, because those difficulties had been presented at length through argument to the court in previous cases."

After Justice Hartwell had made his statement as below, the Chief Justice made the following addition to his own statement:

"I do not recollect having expressed an opinion as to the effectiveness of this Act, as to its being sufficient to accomplish its objects, as distinguished from an expression of approval as to the objects of the bill. On several occasions during that session of the Legislature Mr. Andrade, chairman of the Judiciary Committee of the House, and also other members of that committee, called upon me in regard to various bills, which were discussed by us. In my report to the Legislature I recommended some legislation of this character."

Justice Hartwell—"I do not recollect having ever seen the bill, Act 59, before it was enacted, or that I ever expressed any opinion to any person about its validity or legal effect. In the Goto case last year, a case in which I sat—a case which became very important—I discussed the necessity of changing our laws in conformity with the decisions of the United States Supreme Court. I certainly thought that the laws ought to be changed and I do not remember particularly all with whom I discussed the matter. I remember saying that legislation ought to be prepared and cover the whole ground, and suggesting the question of whether one bill would not cover the whole ground. I remember seeing Mr. Andrade and Mr. Dickey in the office of the Chief Justice but can not recollect what business they were on. Possibly Mr. Andrade thought I was taking part in the consideration of the bill."

Justice Wilder—"Prior to the enactment of this Act 59 and while I was a member of this court I never considered it carefully or otherwise, either as to the form of the bill or otherwise. I could not have rendered an opinion on the form, as I had never seen it."

DR. BRINCKERHOFF'S FUTURE WORK

Members of the medical fraternity, both here and in Honolulu, are interested in the announcement that Surgeon-General Wyman has appointed Dr. Walter R. Brinckerhoff, of New York, director of the proposed government research hospital in the Hawaiian Islands. The latter is the first government institution of its kind in the world planned on a large scale. Congress last year appropriated $100,000 for the hospitals, which is to have accommodation for forty patients and all the modern accessories for such a place. The director will have ample assistants and nurses, $50,000 for salaries having been appropriated for the first year. But little of this amount will be used, because the hospital has yet to be built. It will probably be six months before work on it will be well under way. A square mile of land on the island of Molokai as a site for the hospital has been granted by the territory of Hawaii. The plans as being prepared call for two buildings, one for men patients and the other for women, with a water supply, gas and disinfectant plans, laboratory, storehouses, quarters for nurses and medical staff and an administration building.

It will be the mission of Dr. Brinckerhoff and his associates, under Surgeon-General Wyman, to try to ascertain the origin of the dread disease, to grow its bacilli in test tubes and to see if some animal cannot be inoculated with the germs so that the disease can be readily studied in all its phases. — San Francisco Examiner.

MOODY AFTER ROADS ON SUGAR REBATES

WASHINGTON, March 8.—Upon being shown the publication in the New York American today regarding the alleged granting of rebates on the transportation of sugar, Attorney General Moody said:

Some weeks ago a representative of that paper called on me and said that information was in the possession of that paper tending to show that large rebates on the transportation of sugar had been given to the American Sugar Refining Company by the trunk lines of railroads running out of New York City, and asking if the Department of Justice desired to use the information in legal proceedings. An examination of the matter showed clearly that it was highly important and tended to show the giving and receiving of large money rebates. The subject was then brought to the attention of Mr. Stimson, who had been selected by the President as District Attorney for the Southern District of New York.

Following this, on the first day of February, which was the date of Mr. Stimson's taking office, a conference was held in New York between the Attorney General, Mr. Purdy, and Mr. Stimson, when the evidence was gone over with great care.

It is the purpose of the department to proceed carefully, but with all possible expediency.

It ought to be said that until this information was furnished the department by the representative of the American the department had no knowledge or suspicion of the facts, and that the representatives of that paper have aided the officials of the department in all ways within their powers.

Moody said further:

In the department at present the matter is in the stage of investigation. No determination as to who should be indicted has been arrived at, but full evidence will be laid before the grand jury and it will determine against whom sufficient evidence exists to warrant indictments. It must be remembered that there can be no indictment against any person unless there is specific evidence of his own personal participation in violation of the law.

The District Attorney at New York, under the direction of the Attorney General, will act vigorously, but in the meantime it is no more than fair that judgment be suspended until the whole matter has been investigated and tried by the courts.

FRAUD SHOWN IN LICENSE MATTERS

Editor Advertiser: The following are the facts concerning two saloons in Kona. There has been considerable interest aroused among the people there by opposing petitions for saloons. A man by the name of Sing Sing, Kainaliu, Kona, had twenty-four signers of a petition in his favor—among this number there are nine outside the limit prescribed by law and upon being approached two of the signers deny that they had their signatures acknowledged. However, it is claimed that all these appeared before Mr. Mills July 8, 1905, and were identified upon oath of D. N. Kilinahe.

Another saloon man by the name of T. Shibayama, Kealakekua, Kona, obtained eight signatures on his petition of which names five are those living outside the limit—one of them only claiming to be agent for land within the limit. Three of these men deny acknowledging their signature and yet it is claimed that they have appeared before David K. Baker September 20, 1905. It is noteworthy that this same Shibayama is an applicant for another saloon at Holualoa too. It would seem as though no petition in his favor should be allowed to stand as warrant for the new plea.

Treasurer Campbell has been notified of these facts and the claim has been made that these facts when verified are sufficient to warrant the revoking of the licenses and should effect the standing of the notary public in question. It is desired that large publicity be given to such fraudulent methods of securing saloons.

THEODORE RICHARDS,
Chairman.

E. R. TURNER,
Secretary Committee of Anti-Saloon League.

Honolulu, T. H., March 22, 1906.

At the Christian Endeavor rally at Kawaiahao church on Friday, "The Holy City" was rendered by the Kawaiahao Mission Choir and not the Kawaiahao Glee Club.